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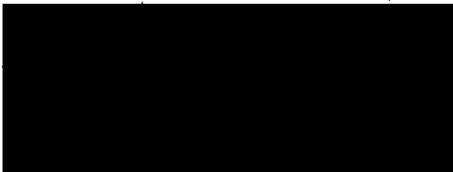
FILE: EAC 07 264 50275 Office: VERMONT SERVICE CENTER Date: **DEC 17 2007**

IN RE: Petitioner:
Beneficiaries:



PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(ii)(b)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

For Michael T. Kelly
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was approved for 19 of the 25 beneficiaries by the Director, Vermont Service Center, and certified to the Administrative Appeals Office (AAO) for review as required by 8 C.F.R. § 214.2(h)(9)(iii)(B)(2)(ii). The decision of the director will be withdrawn in part and modified, and the petition will be approved for 22 of the 25 workers initially named in the petition, that is, for all the named workers except Asi [REDACTED], and [REDACTED].

The petitioner is a AAA Five Diamond luxury resort and full-service hotel located in the French Quarter of New Orleans, Louisiana. It desires to employ the beneficiaries as cooks from October 1, 2007 to June 30, 2008. The Department of Labor (DOL) determined that a temporary certification by the Secretary of Labor could not be made. The director determined that sufficient countervailing evidence has been submitted to show that qualified persons in the United States are not available, that the employment policies of the DOL have been observed, and that the need for the services to be performed is temporary.

The director recommended approving 19 of the 25 workers named in the petition. The director found insufficient evidence of the cook experience of six (6) of the named workers: he stated that two of the beneficiaries submitted resumes in Spanish and that four others did not submit any evidence of their experience as cooks. However, the director's decision does not identify the workers for whom there was insufficient evidence of experience.

The AAO is unable to ascertain from the director's decision the 19 beneficiaries whom the director found eligible to receive the benefits of the petition, and the six beneficiaries who were found to be ineligible. Therefore, that part of the director's decision recommending approval of 19 beneficiaries is withdrawn, to be replaced by the AAO's finding, below, that the petition will be approved for 22 of the 25 aliens named in the petition as filed, that is, for all of the named workers except [REDACTED] and [REDACTED].

The AAO addressed the issue of eligible beneficiaries by faxing requests for additional information to counsel. The documents that counsel submitted in reply are now included in the record of proceedings, and they were considered in the AAO's review of the certification before it.

Subsequent to the director's decision and at the AAO's request, the petitioner withdrew [REDACTED] from consideration for the benefits of the petition. The AAO finds that the petitioner did not submit any evidence of [REDACTED] experience as a cook, and that the evidence submitted on behalf of [REDACTED] relates to experience as a server and maintenance worker, not a cook. Accordingly, the petitioner has not established that [REDACTED] and [REDACTED] have the requisite six months of experience as cooks to perform satisfactorily the job duties stated at Part A, item 13 of Form ETA 750.

The decision of the director recommending approval of the petition is affirmed, as modified above, and the petition is accordingly approved for 22 of the 25 workers initially named in the petition. The petitioner has provided sufficient evidence to establish that the need for the beneficiaries' services is peakload and temporary. The Vermont Service Center will issue the appropriate approval notice.

ORDER: The decision of the director is affirmed as modified and the nonimmigrant visa petition is approved for all the workers originally named in the petition except [REDACTED] (who was withdrawn from the petition) and [REDACTED] and [REDACTED] (for whom the record does not establish the requisite six months of experience as cooks that is stipulated on the Form ETA 750).